



TEXAS TECH UNIVERSITY SYSTEM

Office of Vice Chancellor and General Counsel

April 25, 2019

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

7017 3040 0000 2515 9002

The Honorable Ken Paxton
Attorney General of the State of Texas
Education and Enforcement Section of the Open Government Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

RE: Complaint ID # 763381

Dear Ms. Smith:

Texas Tech University ("TTU"), a component of Texas Tech University System, is in receipt of your letter dated April 11, 2019 advising John Ricker ("Requestor") has filed a complaint alleging TTU is overcharging for copies of public information under the Public Information Act. TTU respectfully submits this response for your review and consideration in response to this allegation.

According to the Texas Public Information Act, TTU is required to respond to the questions in your letter within 10 business days after the date the questions are received by TTU.¹ Therefore, TTU's deadline to respond to this allegation would be no later than April 29, 2019, since the date TTU received the questions from the Attorney General was April 15, 2019.

I. TTU contends that its charge estimate to Requestor sufficiently satisfied the statutory language; therefore, the request is withdrawn by operation of law and the amounts that can be recovered through allowable charges may not be limited.

Pursuant to section 552.2615 of the Government Code, a governmental body that determines charges to provide public information will exceed \$40 must provide the requestor a written itemized statement of estimated charges.² *"If an alternative less costly method of viewing the records is available, the statement must include a notice that the requestor may contact the governmental body regarding the alternative method."*³

The plain language of the statute is clear—TTU is only required to include notice to the Requestor stating that he may contact the governmental body regarding an alternative less costly method of viewing the records, if there is an alternative less costly method of viewing the records available.⁴

¹ See TEX. GOV'T CODE § 552.269(a).

² See TEX. GOV'T CODE § 552.2615(a).

³ See *id.* (emphasis added).

⁴ See *Tex. Tech Univ. v. Dolcefino Commc'ns, LLC*, 565 S.W.3d 442 (Tex. App.—Amarillo 2018) (analyzing the

Here, there is no alternative less costly method for viewing the records requested. The Requestor sought "metadata for all emails sent from bella.k.gerlich@ttu.edu between January 1, 2018 and January 11, 2018." This type of request is not readily available for public viewing without extracting metadata from the CPU mainframe. Hence, this request required TTU to use the CPU mainframe to extract the data because this method was the only option available. Additionally, TTU had to review the results for information protected by the Family Educational Rights and Privacy Act of 1974 ("FERPA") before the Requestor could view the extracted documents.⁵ Since the information requested contains protected FERPA information, viewing the documents would require the exact same costs as receiving a copy because the metadata has to be extracted (metadata does not appear in printed emails or in online views of emails, so it requires "manipulation of data" by an IT professional to extract) and lawfully protected information must be manually redacted prior to viewing the information (manual redaction of an electronic record is also "manipulation of data" under Texas Government Code sections 552.272 and 552.003(2)).

Furthermore, based on the Requestor's specific request, it took five (5) minutes to extract the data. This was a significant portion of the estimate provided, exceeding \$40.00 before labor was even included. TTU notified the Requestor of this cost in its estimate and informed him that it may be less expensive to pull the emails for the short period of time requested and redact all student information. Therefore, TTU has sufficiently satisfied the statutory language of the Texas Government Code because TTU provided the Requestor a sufficient itemized statement of estimated charges for the least costly method of review and provided him an alternative less costly possibility for this request.

II. TTU provided Requestor an estimate of charges in accordance with the Texas Government Code and Texas Administrative Code.

Below is a breakdown of the itemized statement of estimated charges sent to the Requestor, with an explanation of the estimated costs and responses to the questions in your letter.

CPU runtime: 5 minutes @ \$10/minute⁶

\$50.00

Texas Tech University System General Counsel submitted a request to the TTU Information Technology ("IT") Department requesting it provide the required CPU system time and labor minutes needed to extract the metadata responsive to the request. The IT Department extracted the metadata and provided General Counsel's Office the actual CPU system time and labor time to gather the metadata.⁷ The CPU system time reported by the IT Department was five (5) minutes.

5 minutes of CPU system time, multiplied by \$10 a minute = \$50.00

plain language of the Texas Government Code in determining the statutory prerequisite to the waiver of immunity).
5 Review of the extracted information is necessary because the "Subject field" and "To field" may contain student identifying information. For example, a student's name may appear in the "Subject field" and may also identify other information protected by FERPA.

6 1 T.A.C. § 70.3(h)(3).

7 TTU's email system is one of the largest computer systems on the TTU campus and serves large applications and large numbers of users. Specifically, the email system handles over 80 thousand email accounts. See 1 T.A.C. § 70.2(5). In order to extract metadata, the email system must search all email accounts and extract the metadata fitting the search criteria. There does not appear to be a faster or less costly method of extracting this information with the current email system per IT.

Labor hours: 0.6 hours @ \$15/hour⁸

\$ 9.03

IT personnel labor:

The IT Department reported that it took 15 minutes in IT personnel labor time to configure the CPU system to locate, extract and compile the metadata.

15 minutes divided by 60 minutes in an hour is 0.25. The 0.25 was multiplied by \$15 per hour to equal \$3.75 in IT personnel labor.

Redaction labor:

The CPU extraction generated 44 pages of extracted data.⁹ A sample of 25 pages were pulled from the report to determine what percentage of pages would need manual redactions. Out of the sample, six (6) pages required redactions for information protected by the Family Educational Rights and Privacy Act of 1974 (TTU does not plan to seek a ruling from the Attorney General's office regarding redactions protected by FERPA). The six (6) pages requiring redaction were divided by the 25 page sample in order to give TTU an estimate—24% of the 44 generated pages would need manual redactions.

The 44 pages were then multiplied by the 24%, which gave TTU an estimated total of 10.56 pages that would need redactions. The 10.56 was multiplied by two minutes per page for redactions to give TTU a total of 21.12 minutes in estimated redaction time, which equals 0.352 total hours of redaction time.¹⁰

The 0.25 in actual IT personnel labor hours, plus the 0.352 in estimated redaction labor hours, multiplied by \$15 an hour = \$9.03¹¹

Overhead at 20% of Labor¹²

\$ 1.81

Overhead was calculated by multiplying the total labor cost of \$9.03 by 0.20.

Estimated total cost:

\$60.84

TTU then provided the Requestor a written itemized statement of estimated charges because the estimated charges exceeded \$40.00.¹³

⁸ See 1 T.A.C. § 70.3(d)(1).

⁹ The fifty page exception for charges contained in TEX. GOV'T CODE § 552.261 applies only to "50 or fewer pages of paper records"; it does not apply to electronic records. The 44 pages of extracted data are electronic records and TTU used an 11 point font size to determine the number of pages.

¹⁰ Two minutes per page for redactions was determined by many years of redacting documents and is periodically checked by the Office of General Counsel to confirm it is still an accurate measure of the average time it takes to manually redact a page of electronic information. TTU does not currently have the capability of electronically redacting documents.

¹¹ The redaction labor could have been rounded to .35, but the more accurate .352 was used to calculate the \$9.03 in total labor.

¹² See 1 T.A.C. § 70.3(e)(3).


¹³ See TEX. GOV'T CODE § 552.269(a).

III. TTU did not receive a copy of the original complaint, thus the complaint may need to be dismissed for not providing the required information within ten business days after the Requestor knew of the alleged overcharge.

Section 552.269 of the Texas Government Code states that a requestor who believes he or she has been overcharged may lodge a complaint with the attorney general.¹⁴ Complaints must be received within ten business days after the requestor knows of the alleged overcharge. If a complainant does not provide the required information within the established time frame, the complaint is dismissed.¹⁵

TTU has not seen a copy of the complaint filed by the Requestor demonstrating that the attorney general's office received the complaint within the statutorily required deadline. TTU asks that the attorney general's office review the complaint to confirm that it was received on or before March 15, 2019, since the date the Requestor received the estimate was March 1, 2019. If the complaint was not received on or before March 15, 2019, TTU respectfully asks that the complaint be dismissed as the underlying request has statutorily been withdrawn.¹⁶

Very truly yours,



Nathan Christopher
Assistant General Counsel

CC:

Via First Class Mail:

Mr. John Ricker
2317 28th Street
Lubbock, TX 79411

¹⁴ See TEX. GOV'T CODE § 552.269(a).

¹⁵ 1 T.A.C. § 70.8(b).

¹⁶ See *Tex. Tech Univ. v. Dolcefino Commc'ns, LLC*, 565 S.W.3d 442 (Tex. App.—Amarillo 2018).

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